1922.

C.F. 66 (e)—14,824—17-12-21.

Department of Land Revenue & Settlement

OFFICE Board of Revenue

STATION Madras

No. Misc 258/

A 5182/22

Dated 21-12-22

	Date	Initial.
To whom sent		
Given for copying		
Copied	11-30	
Examined		
Signed		
Given for despatch		
Despatched	22/12	
Indexed		
Pages in the file	To be destroyed on	

(SUBJECT.)

Suits (S. Kanara) Mangalore Sub Court O.S. No 2/24 Pilathabettu & Irvathur — Deceased Annaya Shastrigal — Escheated properties — Appeal negatived

* Not to be filled in the case of permanent records.

G.F. 28 1-20.

A 5182

Reference No. V-3-1565-21.

Office of the Collector of S.Kanara

Station Camp: Kulgunda.

Date 23rd November 1922.

BOARD OF REVENUE
- 1 DEC 1922
LAND REVENUE DEPT.
MADRAS

From

M.R.Ry Rao Bahadur S.N.V.Rajachar, Avl., B.A.
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue and Settlement,
Madras.

Sir,

Suit - Mangalore - Sub-Court - O.S.1921-2.

The above suit filed with the approval of the Board conveyed in its proceedings No. 1108 Mis. dated 10-9-1920 was decided by the Sub-Judge on 12-9-1922 in favour of Government substantially.

2. The only points about which the decision affects Government adversely are those regarding mesne profits and improvements. With regard to mesne profits the Sub-Judge, following the High Court's decision reported in 1915, Madras Weekly Notes C.692, has allowed them for only 3 years before the suit. Mr. G.Krishna Rao who conducted the case on behalf of Government, says that the above High Court decision does not lay down a general rule, but may be taken as a precedent. I agree with ~~them~~ *him*.

3. As regards the improvements, the question is whether an alienee from a Hindu widow is entitled to any improvements. On this point there are conflicting decisions. In I.L.R.22 Madras.530, it is held that such an alienee is not entitled to the cost of the improvements, as he cannot be considered to have believed in good faith, under section 51 of the Transfer of Property Act IV of 1882, that the vendor conveyed to him a

good title to the property, while in I.L.R.40 Cal.555, it has been held by the Privy Council that such an --- alienee is entitled to compensation for the improvements to the extent to which the improvements have enhanced the market value of the property, irrespective of the real issue whether he purchased the property in good --- faith or not. In the present case no finding has been recorded by the Sub-Judge in his judgment as to what extent the improvements have enhanced the market value of the property. At any event, the defendants cannot be allowed the full costs of the improvements decreed by the Sub-Judge as the item of Rs.750/- being the cost of the re-building of the temple awarded to 1st defendant is not admissible according to the above ruling of the Privy council and it cannot be said that the market value of the property has been enhanced to the full extent of the total cost of-- the improvements effected many years ago. Besides, -- Defendants 1 to 5 being directly or indirectly the ---- alienees from the widow Mahalaxmi are not entitled to - compensation for the improvements according to the ruling of the Madras High Court quoted above.

4. Then there are two other minor points to be considered. The first is with regard to the value of rice. The rice in the plaint had been valued at Rs.6-7-0; --- 7-14-0; and 8-6-0 per mura for the years 1918.1919, and 1920 respectively taking the value prevalent in Bantwal for the 2nd sort rice at the time. The Sub-Judge directs that the gazette rates should be adopted. These are -- Rs.6-6-0; 7-4-0 and 9-4-0 per mura and do not seem to be unfavourable to Government on the whole. The second -- point is regarding the rate of interest. The rate claimed in the plaint is 12 per.cent, while that allowed by the Sub-Judge is 6 per.cent. This is, however, a matter -- which is purely within the discretion of the court.

5. Taking all things into consideration, I do not think this is a case in which Government by filing an - should give the Defendants an opportunity of filing

4

In the Court of the Subordinate Judge of South Kanara.

O.S.No. - of 1920.

Between :

The Secretary of State for India in Council | Plaintiff

and

1. Subbu alias Gouramma
2. Vittal Shastry
3. Shivamma
4. Padmaraja
5. Srinivasa Hebbara
6. Srinivasa Naika

| Defendants

Plaint under Rules 1 to 6. Order VII of C.P.C.

The abovenamed Plaintiff states as follows:-

1. The Secretary of State for India in Council, the Plaintiff is represented by the Collector of South Kanara. His address for service of all notices and process is as --- stated above.

2. 1st Defendant Subbu alias Gouramma is widow of --- Venkatramana Shadanga, residing in Pilathabettu village, --- Mangalore Taluk. 2nd Defendant Vittal Shastry is son of -- Naraina Shastry residing in Pilathabettu village abovesaid. 3rd Defendant Shivamma is daughter of Kinyappe, 4th Defendant Padmaraja is nephew of Thimmaya Naika and son of the 3rd --- Defendant and both these Defendants reside at Irvattur Guttu in Irvattur Kasba village, Mangalore Taluk. 5th Defendant Srinivasa Hebbara is son of Janardhana Hebbara residing in Irvattur village abovesaid. 6th Defendant Srinivasa Naika is son of Manjunatha Naika residing at Chandthimar in ------ Buntwal village, Mangalore Taluk.

3.(1) That one Annaya Shadanga who was governed by -- the Mithakshara Law of succession, died about the year 1883 leaving behind him no other heirs except his widow Mahalaxmi and a divided distant member of the family by name Venkatramana Shadanga.

(2) The deceased Annaya Shadanga at the time of his death was possessed of immoveable properties in Pilathabettu and Irvattur villages more specifically described in ------- Schedule A hereto.

(3) That shortly after Annaya Shadanga's death, the widow Mahalaxmi on 8th June 1883, alleging that she had been authorised by her husband to adopt a boy named Rama, executed a Will reciting therein that the said boy had been taken by her in adoption and bequeathing certain properties in his favour.

(4) On 11th December 1884 the aforesaid Venkatramana Shadanga having gained over the widow to his side, got her to execute a Moktiari in his name for the management of the deceased's whole estate. The said Moktiari revoked the Will aforesaid, characterising the adoption of Rama as a bogus affair, and reciting therein that the Will had been executed by her under the evil influence of the boy's father one Ananthaya Vailaya. This document further recites that Venkatramana Shadanga was undivided from the deceased Annaya Shadanga, a statement which is untrue and is denied and the falsity of which is further apparent from a reference to the said document itself.

(5) It is further alleged in this Moktiari that the deceased Annaya Shadanga had gifted a portion of the property appertaining to Muli Nos.7 & 9 of Irvattur village assessed at Rs.18-6-5 to Naraina Shastry brother of Mahalaxmi aforesaid, but that as possession of the property gifted had not been given over to the donee, Venkatramana Shadanga should execute a formal deed of gift in favour of Naraina Shastri's heirs.

(6) There is also a recital in this document that 3 mudis seed area out of the Pilathabettu property (item No.2 in Schedule A) are given on Kayam-geni to the aforesaid Narayana Shastri and that the said geni should be collected from him.

(7) On 16th August 1887, the said Mahalaxmi and Venkatramana Shadanga entered into a Partition Deed whereby property in Pilathabettu village assessed at Rs.120-12-6 (item No.1 in Schedule A) was allotted to the share of Venkatramana Shadanga, whilst the widow retained for her

share, property assessed at Rs.30-0-0 (item Nos.2 & 2(a) of Schedule A). According to the terms of the said deed both the sharers could dispose of and alienate their respective shares as they liked.

(8) Mahalaxmi as the widow of the deceased had only a life interest in the estate, and she had no power to partition the same or alienate any portion of it except for necessary purposes. Neither had she any right in law to convert her life interest or her right of maintenance in the whole of her husband's property into an absolute interest in a part of the same. The said Partition Deed is clearly invalid and inoperative.

(9) On the very day of the aforesaid Partition Deed, a Gift Deed was executed by both the widow Mahalaxmi and Venkatramana Shadanga in favour of Venkamma and her son Vittal Shastry (2nd Defendant) in respect of property item No.3 in Schedule A. This Gift deed is again a fraudulent and collusive document got up by them both, to benefit Mahalaxmi's brother and his heirs. The said deed of Gift purports to confirm a prior Gift alleged to have been made by the deceased Annaya Shadanga in favour of Naraina Shastry, which Gift is not true and is denied. Even if Annaya Shadanga intended to make any such gift, as no possession of the property gifted was admittedly given to Naraina Shastry or his heirs during the lifetime of Annaya Shadanga, the said Gift is inoperative, and the Gift Deed dated 16th August 1887 subsequently executed by the widow and Venkatramana Shadanga necessarily fails and is void in law.

(10) That subsequent to the Partition Deed the widow on 24th August 1887 mortgaged the whole of her share to one Manjunatha Naika for Rs.1000/-, and on the same date granted the property to him on mulgeni. Manjunatha Naika having died, his son and heir Srinivasa Naika 6th Defendant on 20th February 1916 transferred his mulgeni right with improvements to Defendants 3 & 4, and on the same date obtained a simple Mortgage for Rs.1400/- in his favour from the said Defendants.

(11) Again on 25th August 1887, the widow Mahalaxmi ---- executed a Deed of Gift purporting to convey to the Nellitirtha Somanatha Dev temple the muli right in the properties --- allotted to her share (item Nos.2 & 2(a) in Schedule A), and the right of redemption in respect of the Mortgage aforesaid subject to the mulgeni in favour of Manjunatha Naika and ---- kayamgeni in favour of Naraina Shastri's heirs as recited --- above in paras 10 & 6. The moktessors of the Somanatha Dev temple in turn, on 11th March 1909 executed a Sale Deed ----- purporting to convey all their right, title and interest in - the property gifted to them, in favour of 2nd Defendant Vittal Shastry.

(12) In respect of the alleged gift of the property item No.3 in Schedule A under the aforesaid Gift Deed dated 16th August 1887 in favour of Venkamma and Vittal Shastry (2nd Defendant), referred to in para 9 supra, the latter on 26th September 1901 executed a Sale Deed in favour of Janardhana Hebbara deceased father of 5th Defendant Srinivasa Hebbara -- who is at present in possession of the property concerned.

(13) The above documents are all collusive and fraudulent transactions and the widow had no right to alienate the ----- property to the detriment of the reversioners. The documents were further not executed for any legal necessity or justifiable purposes recognised by law. All the aforesaid alienations in favour of the Defendants are invalid and not binding against the estate which has now lapsed to the Crown.

(14) The aforesaid Venkatramana Shadanga died in 1895 -- long before the death of the widow Mahalaxmi which took place on 20th June 1911. Under Hindu Law he could come in as a -- reversioner only if he had survived the widow who had a life estate, unless the widow had made a surrender of the whole -- estate in his favour and not of a portion thereof by means of any Partition Deed. Venkatramana Shadanga having predeceased the widow and having left no male issue, neither his daughter Saraswathi nor her children can lay any claim to Annaya ----- Shadanga's estate as they are not within the limits of Bandhu

relationship to the deceased and as such have no heritable - right to the deceased's estate. There being no legal heirs at present who can succeed to the deceased Annaya Shadanga's estate, the same has now lapsed to the Crown as an escheat.

(15) Of the properties in Schedule A, item No.1 ------- appears now to be in the possession of the 1st Defendant who is the widow of Venkatramana Shadanga abovesaid. Properties items Nos.2 & 2(a) which were assigned to the widow's share - under the Partition Deed of 1887 are now in the possession of 2nd Defendant Vittal Shastry and Defendants 3 & 4 respectively. Item No.3 is now in the possession of 5th Defendant on the strength of the Sale deed in favour of his father ------- Janardhana Hebbara referred to in para (12). All these ---- Defendants are now in wrongful possession of the property --- having no manner of right thereto. The said Defendants were called upon to surrender possession thereof to Government --- with Mesne profits, but they have failed to do so.

(16) 6th Defendant has been added as a party to the suit as he claims a right under two alleged Mortgage deeds dated - 24th August 1887 and 20th February 1916 referred to in ------ para(10) over items Nos.2 & 2(a) which however are in no way binding on Plaintiff, and also he is accountable for the ---- Mesne profits in respect of items No.2 & 2(a) from the date - of the death of the widow up to the date of transfer in ----- favour of Defendants 3 & 4.

4. The cause of action to this suit arose on the death of Mahalaxmi the widow of the deceased Annaya Shadanga on --- 20th June 1911 at Pilathabettu and Irvattur villages, ------- Mangalore Taluk within the jurisdiction of this Court.

5. Plaintiff estimates the value of the reliefs ------ claimed at Rs.30,122-3-9 for Court fees and at Rs.32,522-3-9 for the purpose of jurisdiction.

6. Plaintiff therefore prays for decree and judgment - against Defendants for the following reliefs:-

	For Court fees	For jurisdiction.
(1) For possession of the plaint property from Defendants Nos.1 to 5 as per details in Schedule A hereto, declaring the several alienations and documents referred to above to be null and void and not binding on Plaintiff. This relief is valued at five times the assessment which with the value of buildings as per Schedule A comes to	2014-11- 0	2014-11- 0
(2) For a declaration that the two Mortgage Deeds dated 24th August 1887 and 20th February 1916 in favour of 6th ------ Defendant is void and not binding on Plaintiff. This relief is valued at - Rs.2400 the amount of the Mortgage -- Deed for jurisdiction and a Court --- fee of Rs.10 is paid on it.		2400- 0- 0
(3) For Mesne profits from Defendants ---- from 20th June 1911 up to 31st ------ October 1920 in respect of plaint --- property as per details in the ------ subjoined Schedule B or against such of the Defendants and in such ------- proportion as the Court should think fit to adjudge.	28,107- 8- 9	28,107- 8- 9
(4) For future Mesne profits from this --- date till delivery which is estimated approximately at 1691-9-2 from 1st -- Defendant, 1027-6-8 from 2nd to 4th - Defendants and at 325-0-6 from the -- 5th Defendant.		
(5) For costs of this suit against all the Defendants or against such of them -- and in such proportion as the Court - should think fit to adjudge.		
(6) For such other relief or reliefs as -- the Court deems proper to grant under the circumstances of the case.	30,122- 3- 9	32,522- 3- 9

/True Copy/

For Collector.

Subject.— C0

R. F, XXII-A-19—$1,580—12-16.

FOR MEMBER

Suit (S. Kanara) Mangalore Sub Court- O.S. No 2/21- Pilathabettu & Irvathur - Deceased Annaya Shadanga - Escheated properties - Appeal negatived

READ AGAIN B.P., No. _____ dated _____ 191

" " " _____ , " _____ 191

READ ALSO :—

Register No. A 5182/22 From the _____, No. _____, dated 6 191

" "_____" , " "_____, "_____, "_____ 191

" "_____" , " "_____, "_____, "_____ 191 .

RESOLUTION. No. 2581, dated 21- 12- 1922

The Board agrees with the Collector that an appeal is unnecessary.

2. If however the defendants Appeal against the decree of the Sub Judge, a memo of objections should be filed on behalf of Government

16.12.22

16.12.22

To the Collector D. Kanara with records - at p 3 C/f.

Appeal time Expires 22.1.1923

C.F. 16—17-2-14.

OFFICE NOTE.

SUBJECT.

A 5782/22
Suits (S. Kanara) Mangalore Sub Court. O.S. no 2/22
From Appeal

Register No.

To Secretary

In the plaint filed by Govt. mesne profits were claimed from 20.6.1911 ie from the date of the death of Mahalaxmi the widow of Annaya Shadanga. The Sub Judge has however allowed the mesne profits only for three years. This is generally the period for which they are claimable. Please see Art 109 of the Limitation Act. In view of the reasons given in para 34 of the Sub Court's Judgment, no appeal on this point deems necessary.

The Sub Judge has adopted the Gazette rate. We submitted Govt Cavit go back on their own rates. The Court rate of interest is always 6%. We appeal on both these points deems necessary

On the question of improvements, the Collector has cited certain conflicting authorities. If

necessary, the G.P. Madras may be consulted.

Govt have substantially won. Govt it is submitted need not appeal in the first instance. If the defendants appeal, Govt may file a memo of objections

There is a slight discrepancy in figures re improvement p830 of (T)
to 8.12.22 as reported by the Commissioner and as embodied p297 of (C)
in para 35 of the Judgment

	Commrs figures	—	Figures in Judgment	—	Difference
1st defendant	3201-7-6		3202-7-6		1 —
3rd & 4th	640-5-6		640-5-7.		— 1.

12.12.22

8.12.22 No action is needed now. 13.12.22

15.XII.22

To Ass[t] Secy

Draft submitted.

Para 2 is also for approval

16.12.22 19.12.22

13.12.22

14.12.22